Rules of Department of Community Affairs
110-9 Job Tax Credit Program

Chapter 110-9-1
Job Tax Credit Program Regulations

110-9-1-.03 Job Tax Credit. Amended.

(1) **Eligibility for Job Tax Credit for New Jobs Created in Year One.** Provided that all the provisions of these regulations are met, business enterprises in counties currently designated by the commissioner of community affairs as tier 1 counties or less developed census tract areas shall be allowed a job tax credit for taxes imposed under Article 2 of Chapter 7 of Title 48 equal to $3,500.00 annually, business enterprises in counties currently designated by the commissioner of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed under Article 2 of Chapter 7 of Title 48 equal to $2,500.00 annually, business enterprises in counties designated by the commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for taxes imposed under Article 2 of Chapter 7 of Title 48 equal to $1,250 annually, business enterprises in counties currently designated by the commissioner of community affairs as tier 4 counties shall be allowed a job tax credit for taxes imposed under Article 2 of Chapter 7 of Title 48 equal to $750.00 annually for each new job created for five (5) years beginning with years two through six after the creation of the job.

(a) A business enterprise will receive job tax credits in year two for full-time jobs created in year one and maintained in year two. Similarly, a business enterprise will receive job tax credits in year three for full-time jobs created in year one and maintained in year three. This method of calculating job tax credits also applies in years four through six. The number of jobs maintained during years two through six will be calculated in the same manner as described in 110-9-1-.03(1)(c), i.e., using a comparison of average monthly employment from taxable year to taxable year.

(b) Only those business enterprises that increase employment by five or more in a tier 1 county or in a less developed census tract area shall be eligible for the credit. Only those business enterprises that increase employment by 10 or more in a tier 2 county shall be eligible for the credit. Only those business enterprises that increase employment by 15 or more in a tier 3 county shall be eligible for the credit. Only those business enterprises that increase employment by 25 or more in a tier 4 county shall be eligible for the credit. The credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit received for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected.

(c) The number of new jobs increase shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding number of the prior taxable year. The monthly average number of full-time employees in a taxable year shall be determined by the following method:

1. for each month of the taxable year, count the total number of full-time employees of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;

2. add the monthly totals of full-time employees; and

3. divide the result by the number of months the business enterprise was in operation during the taxable year. Transferred jobs and replacement jobs may not be included in the monthly totals.

(d) Job tax credits for jobs created in year one and maintained during a portion of or all of the following five years will not be affected even if the county/census tract area, during years two through six, is no longer designated as less developed or is reclassified.

(2) **Eligibility for Job Tax Credit for Additional New Jobs (Jobs Created During Years Two Through Six).** Tax credits for five years for the taxes imposed under Article 2 of Chapter 7 of Title 48 shall be awarded for additional new jobs created by business enterprises qualified under subsection (b) or (c) of Code Sections 48-7-40 and 48-7-40.1. Additional credits are allowed for additional new jobs if the business enterprise already qualifies for the job tax credit based on new job increases in year one and if the county/census tract area is in a currently designated less developed area. Additional credits are also allowed for additional new jobs if the business enterprise already qualifies for the job tax credit based on new job increases in year one and the additional new jobs are created within the time-frame of a current and accepted notice of intent. Additional new jobs shall mean those new jobs created in year two that increase an employers monthly average of full-time employees above the number of monthly average of full-time employees in year one; and those new jobs created in year three that increase an employers monthly average of full-time employees above the highest number of monthly average of full-time employees achieved by a business enterprise in previous years beginning with year one, etc. Additional new jobs may only be created in years two through six, including all subsequent years two through six initiated by a qualifying increase of new jobs.

(a) The number of additional new jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding number of the prior taxable year. The monthly average number of full-time employees in a taxable year shall be determined by the following method:

1. for each month of the taxable year, count the total number of full-time employees of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;

2. add the monthly totals of full-time employees; and

3. divide the result by the number of months the business enterprise was in operation during the taxable year. Transferred jobs and replacement jobs may not be included in the monthly totals.

(b) A business enterprise will receive job tax credits in year three for additional new jobs created in year two and maintained in year three. Similarly, a business enterprise will receive job tax credits in year four for additional new jobs created in year two and maintained in year four. This method of calculating job tax credits also applies to the remaining three years that an enterprise may receive tax credits for additional jobs created in year two. This same process applies to additional new jobs created in years three through six. The number of additional jobs maintained during years two through six after their creation will be calculated in the same manner as described in 110-9-1-.03(2)(a), i.e., using a comparison of average monthly employment from taxable year to taxable year.

(c) Job tax credits for additional jobs created in years two through six and maintained during a portion of or all of the following five years will not be affected even if the county/census tract area, at some point during years two through six, is reclassified to another tier or is no longer designated as less developed.

(d) Additional job tax credit amounts shall be based on the county's current tier status or on the current accepted notice of intent. In addition, job tax credits for additional jobs shall only be allowed if the business enterprise has met, in Year 1, the net employment increase required by the county's current tier status. If, however, a company has filed a notice of intent that has been accepted by the commissioner of community affairs and if additional jobs are created within the time-frame of the notice of intent, credits for additional jobs will be allowed if the business enterprise has met, in Year 1, the net employment increase required by the county's tier status temporarily preserved by the notice of intent filed with the Georgia Department of Community Affairs.

(3) **Additional Job Tax Credit Program Requirements for Tier 1, Tier 2, Tier 3 and Tier 4 Counties for All New and Additional Jobs Starting with Taxable Years Beginning on or After January 1, 2001.** These provisions only apply to tier 1, tier 2, tier 3, and tier 4 counties. They do not apply to job tax credits for less developed census tract areas.

(a) To qualify for any job tax credits, business enterprises must make health insurance coverage available to all employees filling the new or additional new full-time jobs; provided, however, that nothing in these regulations shall be construed to require business enterprises to pay for all or any part of health insurance coverage for such employees in order to claim job tax credits if such business enterprises do not pay for all or any part of health insurance coverage for other employees.

1. This provision requires that health insurance is made available to all new or additional employees in order for business enterprises to qualify for job tax credits. Business enterprises do not have to pay for such insurance unless they are paying for all or part of the cost of such insurance for existing employees. That is, new and additional employees must receive the same health insurance benefit as existing employees, and, at a minimum, must have health insurance coverage made available to them.

2. In order for a business enterprise to demonstrate compliance with this provision, an officer of the company must execute the appropriate certification as prescribed by DCA. Upon audit, business enterprises must document the availability of health insurance coverage with insurance plan documents and other relevant information.

(b) In tier 1 counties, the average wage of the new and additional jobs created must be above the average wage of the county where such jobs are located. In tier 2 counties, the average wage of the new and additional jobs created must be 5 percent above the average wage of the county where such jobs are located. In tier 3 counties, the average wage of the new and additional jobs created must be 10 percent above the average wage of the county where such jobs are located. In tier 4 counties, the average wage of the new and additional jobs created must be 15 percent above the average wage of the county where such jobs are located.

1. The average wage of the county means the average wage as reported in the most recently available annual issue of the *Georgia Employment and Wages Averages Report* of the Georgia Department of Labor, which is the issue that is available as of the last day of the tax year in which the jobs are created.

2. Calculation of the average wage of the new and additional jobs is as follows:

(A) For any years that DCA requires measurement of the average wage, provide the total wages paid to all employees included in a business enterprises' monthly average of full-time employees for all applicable tax years. Applicable tax years include all 12 months of the year prior to job creation and all 12 months of the year of job creation.

(B) For the year prior to job creation, divide the total wages for all full-time employees for the year by the number of weeks the business enterprise was in operation. This calculation gives the average weekly wages paid by the business enterprise for the year prior to job creation.

(C) For the year of job creation, divide the total wages for all full-time employees for the year by the number of weeks the business enterprise was in operation. This calculation gives the average weekly wages paid by the business enterprise for the year of job creation.

(D) Calculate the number of new or additional jobs as otherwise required by these regulations.

(E) Calculate the absolute increase, if any, in the average weekly wages paid by the business enterprise from the year prior to job creation to the year of job creation. This calculation is always made using consecutive years.

(F) Divide the increase in the average weekly wages paid by the business enterprise by the increase in new or additional jobs to obtain the average weekly wage of the new or additional jobs.

(G) Compare the average weekly wage of the new or additional jobs to the average weekly wage of the county. Note that the comparison is made between the average weekly wage of the new or additional jobs and the average weekly wage for all types of jobs in the county as of the most recently available annual issue of the *Georgia Employment and Wages Averages Report* of the Georgia Department of Labor. The average weekly wage of the new or additional jobs must be above the average weekly wage thresholds as required by law and regulation.

3. The average weekly wage of the new or additional jobs will only be measured under the following circumstances:

(A) When the threshold number of new full-time jobs has been created, initiating a Year 1 or a subsequent Year 1; and

(B) When additional full-time jobs have been created in taxable years after January 1, 2001, and before the creation of Year 1 or subsequent Year 1 jobs.

(4) **Initiation of Subsequent Periods of Eligibility for Job Tax Credits Based on Required Net Employment Increases for Counties and Less Developed Census Tract Areas.** A subsequent year one and years two through six are created when a business enterprise creates the required threshold number of new jobs or more above its previous high employment (based on monthly average of full-time employees for each year) beginning with employment during the business enterprise's first year of eligibility for the job tax credit (initial year one).

(a) Subsequent periods of eligibility are subject to all the provisions of these regulations and Official Code of Georgia Annotated Sections 48-7-40, 48-7-40.1, and 36-62-5.1.

(b) Job tax credits generated under previous periods of eligibility will not be affected as long as the new jobs are maintained. But no new job tax credits may be generated under previous periods of eligibility after a subsequent period of eligibility has begun.

(c) If a business enterprise creates the required number of new jobs to establish a subsequent period of eligibility but does not meet other requirements in law or regulation pertaining to health insurance and above average wages, no subsequent period of eligibility is established. In addition, such new jobs may not be counted as additional jobs under a previous period of eligibility.

(5) **Computation of Job Tax Credit for Business Enterprises Based On Employment and Average Wages By County/Census Tract Area.** For all business enterprises, the computations for employment increases and average wages for the job tax credit will be based on total qualified employment and wages dedicated to manufacturing, warehousing and distribution, processing, telecommunications, research and development, or tourism separately for each taxpayer in each individual county/census tract area.

(a) When a single physical location includes both business enterprises and other activities, only employment directly associated with the business enterprises may be counted toward the number of new full-time jobs needed to generate credits, unless the single physical location is primarily engaged in eligible activities as defined by these regulations.

(6) **Computation of Job Tax Credit for Business Enterprises Based On 12 Month Periods Only.** Business enterprises must compute increases and decreases in full-time jobs on the basis of 12-month periods only, even when business enterprises have taxable years that are not equal to 12 months.

(7) **Carryforward of Job Tax Credit and Limitation on Amount of Tax Credit In Any One Taxable Year.** Any credit claimed under Code Sections 48-7-40, 48-7-40.1, or 36-62-5.1 but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established. In tiers 3 and 4 and in less developed census tract areas, the credit established by Code Sections 48-7-40, 48-7-40.1, and 36-62-5.1 taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year. In tiers 1 and 2, the credit allowed under Code Sections 48-7-40, 48-7-40.1, and 36-62-5.1 against taxes imposed under this article in any taxable year shall be limited to an amount not greater than 100 percent of the taxpayer's state income tax liability attributable to income derived from operations in this state for such taxable year.

(8) **Use of Job Tax Credits Against Income Tax Withholding for Tier 1 Counties and Less Developed Census Tract Areas.** Business enterprises in tier 1 counties and in less developed census tract areas shall be allowed job tax credits as allowed by law and regulation. When the amount of such credits exceed income tax liability credit limitations (100 percent of income tax liability in tier 1 counties and 50 percent of income tax liability in less developed census tract areas), the excess may be taken as a credit against quarterly or monthly payments under Code Section 48-7-103 but not to exceed in any one taxable year $3,500.00 for each new full-time employee job when aggregated with the credit applied against income tax liability.

(a) Note that DCA will not further regulate or administer this provision. Specific regulations and procedures will be developed by the Georgia Department of Revenue.

(9) **The Sale, Merger, Acquisition, Reorganization, or Bankruptcy of any Business Enterprise Shall Not Create New Eligibility in any Succeeding Business Entity.** The sale, merger, acquisition, reorganization, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity. Any unused job tax credit may be transferred by a business enterprise to any transferee of that business enterprise. New tax credits may be earned by any transferee of a business enterprise for new, full-time jobs created by the original business enterprise as long as those new, full-time jobs are maintained by the transferee of the business enterprise and as long as the transferee meets other applicable requirements in law and regulation.

(a) When one business purchases another business enterprise and the requirements of paragraph 6(h), rule 110-9-1-.01, requiring assets to be idle for six months or longer have not been met, the succeeding enterprise may be eligible for tax credits for new jobs above the employment levels of the preceding business enterprise. The succeeding business enterprise must submit information to the commissioner of community affairs sufficient to establish a base level of employment before any credit may be allowed. Submission of this information will require that the preceding business enterprise be willing to supply the succeeding business enterprise or the commissioner of community affairs payroll or other information confirming the employment base of the preceding company.

(10) **Report Issued Annually by the State Revenue Commissioner.** Each year, the state revenue commissioner will issue a report on the job tax credit. Included in the report will be information, by county/census tract area, by year, on the number of jobs created through the job tax credit and the amount of the tax credit used by all business enterprises.

(11) **Authority of the Commissioner of Community Affairs.** The commissioner of community affairs shall determine which businesses are engaged in qualifying activities and whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(12) **Special Provisions.**

(a) Notwithstanding any provision of these regulations to the contrary, in all counties designated as tier 1 for any period of time prior to January 1, 1994, job tax credits shall be allowed as provided in these regulations, in addition to business enterprises, to any business of any nature for jobs created from January 1, 1993 through December 31, 1997. The counties affected by this provision are as follows: Appling, Atkinson, Bacon, Baker, Brantley, Burke, Calhoun, Clay, Clinch, Cook, Crisp, Decatur, Dodge, Dooly, Early, Elbert, Emanuel, Greene, Hancock, Jefferson, Jenkins, Long, Macon, Marion, McIntosh, Meriwether, Mitchell, Montgomery, Quitman, Randolph, Screven, Seminole, Stewart, Talbot, Taliaferro, Taylor, Telfair, Terrell, Toombs, Treutlen, Turner, Twiggs, Warren, Webster, Wheeler, and Worth. Also, beginning with taxable years that begin on or after January 1, 1999, in counties recognized and designated as the first through fortieth least developed counties in the tier 1 designation, job tax credits shall be allowed as provided in these regulations, in addition to business enterprises, to any business of any nature.

(b) Tax credits generated during taxable years beginning prior to January 1, 2001 will not be affected by changes in these regulations. Such tax credits will be based on law and regulation in effect at the time the credits were generated.

(c) For tax years beginning on or following January 1, 2001, tax credits, whether generated during year one or during any years two through six, will be based on provisions in these regulations with the following exception: business enterprises may make a one-time election, on a taxpayer by county basis, to utilize the Job Tax Credit Program on the basis of law and regulation applicable immediately prior to January 1, 2001, if the business enterprises have begun a Year One prior to January 1, 2001, and the subsequent Years Two Through Six does not expire prior to January 1, 2001. This exception will expire at the end of such subsequent Years Two Through Six. Credits, job threshold requirements, number of tiers and less developed census tracts, and other requirements will be based on law and regulation applicable immediately prior to January 1, 2001, but tier status and census tract area designations will be based on the county and census tract rankings in the years when job creation occurs. If job creation thresholds for law and regulation applicable to periods beginning on or after January 1, 2001, are met or exceeded during the period of election made by business enterprises, these new jobs will be treated as additional jobs under law and regulation applicable immediately prior to January 1, 2001. Such new jobs will not be entitled to credits and other benefits under law and regulation applicable to periods beginning on or after January 1, 2001. Under this exception, credits will be earned for five years beginning after the year of job creation as otherwise provided in law and regulation applicable immediately prior to January 1, 2001. The commissioner of community affairs shall determine which business enterprises are entitled to this election and shall make final determinations regarding qualifying net increases, decreases, and credit amounts.

(d) The amount of any tax credit will be based on the status of the county/less developed census tract area in the year in which qualifying new full-time jobs are created and not on the status of the county/less developed census tract area in subsequent years when qualifying jobs are being maintained.

(e) When a less developed census tract area and a less developed county overlap, the following rules shall apply unless otherwise changed by the commissioner of community affairs based on a petition from a business enterprise:

1. If a business enterprise locates in the area of overlap between a tier 1 county and a less developed census tract area, rules governing the tax credit shall be based on the portions of these regulations governing tier 1 counties;

2. If a business enterprise locates or expands in the area of overlap between a tier 2 county, a tier 3 county or a tier 4 county and a less developed census tract area, the business enterprise may choose to claim the credit authorized by Code Section 48-7-40 or the credit authorized by Code Section 48-7-40.1 each applicable tax year, provided all requirements of the applicable Code Sections are met; and

3. under no circumstances shall tax credits based on less developed counties and less developed census tract areas be added.

(f) Not less than 30 percent of qualifying jobs created and maintained by business enterprises in less developed census tract areas that claim the credit authorized by Code Section 48-7-40.1 must be held by a resident of the less developed census tract area for which the credit is sought or another such designated less developed census tract area or less developed tier 1 county. Business enterprises wishing to qualify for the tax credit under Code Section 48-7-40.1 must use DCA's methodology or a methodology approved by DCA for determining whether or not the 30 percent requirement in the Code Section is met. No such methodology will change the way in which new and additional full-time jobs are measured.

(g) In counties designated as the 54th through the 80th less developed counties for calendar year 1994, job tax credits equal to $1,000 annually for five years beginning with year two after the creation of the jobs shall be allowed for business enterprises that create between 10 and 24 new full-time jobs during their taxable year beginning on or after January 1, 1994 but prior to January 1, 1995. Such credits shall be allowed provided that those business enterprises meet all other requirements of these regulations.

(h) A business enterprise located within the jurisdiction of a joint authority established by two or more contiguous counties will qualify for an additional $500.00 tax credit for each new full-employee position created. A business enterprise located within the jurisdiction of a joint authority, however, must create the number of new jobs required by the tier status of the county in which the business enterprise is located before any tax credits will be allowed. The $500.00 job tax credit authorized by this subparagraph shall be subject to all the conditions and limitations specified under these regulations. With respect to a joint authority created on or before March 31, 1995, and notwithstanding any provision of these regulations to the contrary, any taxpayer eligible for an additional $500.00 tax credit pursuant to this subparagraph shall have the option of electing to utilize for a given project the tax credit formerly authorized under Code Section 36-62-5.1 pertaining to taxable years beginning prior to January 1, 1995, in lieu of the tax credit otherwise available pursuant to this subparagraph. Such election shall be made for each committed project in writing on or before July 1, 1995, to the commissioner of community affairs. Such election shall not be effective unless approved in writing by the commissioner of community affairs. The election must be made using a notice of intent form provided by the Georgia Department of Community Affairs and must state the county/census tract area for which the project is planned, the number of new jobs planned, and the dates of the planned expansion. All properly executed notices of intent received by the Georgia Department of Community Affairs between January 1, 1994 and

July 1, 1995 shall be accepted as an election of the tax credit formerly authorized under Code Section 36-62-5.1 pertaining to taxable years beginning prior to January 1, 1995. The election of the formerly authorized tax credit will be applicable to otherwise eligible projects for new full-time jobs created during taxable years beginning on or after January 1, 1995, January 1, 1996, January 1, 1997, and January 1, 1998. The election will no longer be applicable for new full-time jobs created during taxable years that begin on or after January 1, 1999. Benefits of the election shall apply to both new jobs created in year one and to additional new jobs. Benefits of the election will be based on county tier rankings for the calendar year 1995. Benefits will include allowing the higher credit authorized by the election for years two through six after new job creation, even if all or a portion of years two through six begin on or following January 1, 1999. The benefits of the job tax credit authorized by the election provided for in this subparagraph shall be subject to all the conditions and limitations specified under these regulations. The Georgia Department of Community Affairs will not regulate the creation or operation of joint development authorities nor will the department define bona fide authorities for the purposes of the job tax credit program.

(i) No taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in these regulations if such taxpayer claims on such tax return any of the credits authorized under Code Sections 48-7-40.2, 48-7-40.3, or 48-7-40.4, unless otherwise specifically allowed under these Code Sections.

(j) These regulations shall be applicable to all taxable years beginning on or after January 1, 2001 unless otherwise required by law.

(Authority O.C.G.A. 48-7-40(e), O.C.G.A. 48-7-40(f), O.C.G.A. 48-7-40(g), O.C.G.A. 48-7-40, (h), O.C.G.A. 48-7-40(i), O.C.G.A. 48-7-40.1(e), O.C.G.A. 48-7-40.1(f), O.C.G.A. 48-7-40.1(g), O.C.G.A. 48-7-40.1(h), O.C.G.A. 48-7-40.1(i), O.C.G.A. 36-62-5.1(e), and O.C.G.A. 36-62-5.1(f).)